Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO *and* New York Times Newspaper Division of The New York Times Company and International Association of Machinists and Aerospace Workers, District No. 15, AFL-CIO. Case 2-CD-630

August 20, 1981

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

This is a proceeding under Section 10(k) of the National Labor Relations Act, as amended, following a charge filed by New York Times Newspaper Division of The New York Times Company, herein called the Employer, alleging that Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, herein called Electrical Workers, had violated Section 8(b)(4)(D) of the Act by engaging in certain proscribed activity with an object of forcing or requiring the Employer to assign certain work to its members rather than to employees represented by International Association of Machinists and Aerospace Workers, District No. 15, AFL-CIO, herein called Machinists.

Pursuant to notice, a hearing was held before Hearing Officer David A. Pollack on March 3 and 18, 1981. All parties appeared and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to adduce evidence bearing on the issues.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

Upon the entire record in this proceeding, the Board makes the following findings:

I. THE BUSINESS OF THE EMPLOYER

The parties stipulated, and we find, that the Employer, a New York corporation with its principal place of business in New York, New York, is engaged in the publication and distribution of a daily newspaper. During the past year, the Employer purchased supplies from outside the State having a value of $50,000. The parties also stipulated, and we find, that the Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATIONS INVOLVED

The parties stipulated, and we find, that Electrical Workers and Machinists are labor organizations within the meaning of Section 2(5) of the Act.

III. THE DISPUTE

A. *Background and Facts of the Dispute*

In July 1978, the Employer initiated operation of the Log E writer as an integral part of its publishing process. The Log E writer is designed to receive electronic impulses from a Log E reader,[1] and convert that information into a laser mask which then is used for place production. Initially service and maintenance work on the Log E writer was performed by an outside contractor, Lutz Computer Service, Inc., under contracts with Log E Scan Systems, Inc., the manufacturer of the Log E writer, and the Employer. The work performed by Lutz was covered under a warranty which was provided by Log E Scan Systems and which expired in December 1979. Thereafter, the Employer assigned the repair and maintenance work to electricians represented by Electrical Workers. Prior thereto, 11 electricians received 6 weeks' training on the Log E writer at the Employer's premises. After this initial period of instruction, four or five of these employees received advanced training at the manufacturer's facility in Virginia.

In an October 3, 1980, letter to John Mortimer, executive vice president of the Employer, Machinists requested arbitration concerning the assignment of the maintenance work on the "Log Escan machine." Thereafter, Mortimer telephoned John O'Hara, assistant business manager for Electrical Workers, and asked if Electrical Workers wished to participate in the arbitration proceeding requested by Machinists. O'Hara declined and indicated that, if the Employer attempted to implement an arbitration award that would deprive electricians of the work in dispute, Electrical Workers would engage in self-help to maintain the current assignment. By letter dated October 23, 1980, Mortimer renewed his invitation to O'Hara to participate in the arbitration sought by Machinists. O'Hara responded by letter dated November 5, 1980, wherein he stated that Electrical Workers would not participate in the proposed arbitration, that the contract between Electrical Workers and the Employer clearly assigned the disputed work to employees represented by Electrical Workers, and that, if necessary, Electrical Workers would engage in strike activity to protect that assignment. During the

[1] The repair and maintenance work of the Log E reader is not the subject of the instant dispute.

hearing, O'Hara reiterated his earlier threat that Electrical Workers would, if necessary, engage in self-help to maintain assignment of the disputed work.

B. *The Work in Dispute*

The work in dispute involves the maintenance of the Log E writer at the Employer's Letterflex room in its West 43d Street, New York, New York, facility.

C. *The Contentions of the Parties*

The Employer contends that the assignment of the work in dispute to the electricians represented by Electrical Workers is supported by the collective-bargaining agreement, skills and training, company and industry practice, and economy and efficiency of operations.

Machinists asserts that the employees it represents have the necessary basic skills, since the work in dispute is mechanical maintenance work and, given the proper training, they would be able to perform it.

Electrical Workers takes the position that the Employer established on the record that the assignment was proper. It also contends that the Board lacks jurisdiction because it is entitled to strike to protect its contractual right to the disputed work.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of the dispute pursuant to Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed upon a method for the voluntary adjustment of the dispute.

Under settled Board policy, there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred if a labor organization which represents employees who are assigned the disputed work puts improper pressure upon an employer to continue such assignment.[2] Thus, Electrical Workers' threats to strike to protect the work assignment provide sufficient ground for proceeding.

On the basis of the entire record, we conclude that there is reasonable cause to believe that a violation of Section 8(b)(4)(D) has occurred and that there exists no agreed-upon method for the voluntary adjustment of the dispute within the meaning of Section 10(k) of the Act. Accordingly, we find that this dispute is properly before the Board for determination.

E. *Merits of the Dispute*

Section 10(k) of the Act requires the Board to make an affirmative award of disputed work after giving due consideration to various factors.[3] The Board has held that its determination in a jurisdictional dispute is an act of judgment based on commonsense and experience reached by balancing those factors involved in a particular case.[4]

The following factors are relevant in making the determination of the dispute before us:

1. Collective-bargaining agreements

The Employer's collective-bargaining agreement with Electrical Workers in effect at the time the instant dispute arose covers work described as "necessary to or connected with maintenance, servicing, repairing, relocation, extension, or repairs or substitution of or addition to electrical and electronic wiring apparatus or equipment," but limited to "such work as is capable of being performed by a normal work force." Bound and printed with the basic collective-bargaining agreement is a letter agreement "confirming jurisdiction of [Electrical Workers] over maintenance work on the Log E equipment" after the transition period in which Lutz retained the responsibility for this work has expired and employees represented by Electrical Workers have been trained for it. The Employer's collective-bargaining agreement with Machinists provides only that the "jurisdiction of work being performed by machinists shall not be altered during the life of this Agreement." The Electrical Workers' agreement clearly encompasses the work in dispute; the Machinists' agreement does not, and this factor strongly favors the assignment of the work to employees represented by Electrical Workers.

2. Company and industry practice

Maintenance work on the Employer's Log E writer at another of its plants has been performed by an independent contractor who very infrequently is assisted by employees represented by Machinists. Those employees, however, have performed only certain specific tasks and never have had the responsibility for maintaining the equipment. The only other experience the Employer has had with this equipment has been in its New York Letterflex room where the employees represented by Electrical Workers have performed the work in dispute

[2] *New York Typographical Union No. 6, International Typographical Union, AFL-CIO (New York News, Inc.)*, 252 NLRB 553 (1980).

[3] *N.L.R.B. v. Radio & Television Broadcast Engineers Union, Local 1212, International Brotherhood of Electrical Workers, AFL-CIO [Columbia Broadcasting System]*, 364 U.S. 573 (1961).

[4] *International Association of Machinists, Lodge No. 1743, AFL-CIO (J. A. Jones Construction Company)*, 135 NLRB 1402 (1962).

since approximately a year before the instant dispute developed. Industry practice is not extensive, the equipment in question being relatively new to the market. Other newspapers using such equipment have used employees with electrical or electronic engineering backgrounds to maintain and repair it. On balance, therefore, the factor of company and industry practice favors assignment of the work to employees represented by Electrical Workers.

3. Relative skills

As noted above, electricians represented by Electrical Workers received 6 weeks' special training to perform the work in dispute and have been performing it for some time. In addition, a witness for the Employer testified that the electronics background of the electricians is essential to learning and performing this work. Machinists claims the employees it represents have the necessary basic skills and could perform the work adequately if given proper training. Clearly, the electricians have the superior relevant skills.

4. Economy and efficiency of operations

The Employer contends that the electricians assigned to perform the work in dispute are utilized efficiently in performing this and other electrical work, and that assignment of all or part of the work in dispute to employees represented by Machinists would require the hiring of additional employees with less efficient use of their time. Machinists disputes these contentions but has not presented any evidence to the contrary. On balance, the factors of economy and efficiency favor assignment of the work to employees represented by Electrical Workers.

5. Employer assignment and preference

The Employer has assigned the work in dispute to its employees represented by Electrical Workers who perform that assignment. The factor favors an award of the work to those employees.

Conclusion

Upon the record as a whole, and after full consideration of all relevant factors involved, we conclude that employees who are represented by the Electrical Workers are entitled to perform the work in dispute. We reach this conclusion relying on all the factors discussed above. In making this determination, we are awarding the work in question to employees who are represented by Electrical Workers, but not to that Union or its member. The present determination is limited to the particular controversy which gave rise to this proceeding.

DETERMINATION OF DISPUTE

Pursuant to Section 10(k) of the National Labor Relations Act, as amended, and upon the basis of the foregoing findings and the entire record in this proceeding, the National Labor Relations Board hereby makes the following Determination of Dispute:

Employees who are represented by Local Union No. 3, International Brotherhood of Electrical Workers, AFL-CIO, are entitled to perform the work of maintenance of the Log E writer at the Employer's Letterflex room.